



January 15, 2019

Office of the Secretary
Federal Trade Commission
600 Pennsylvania Avenue NW
Suite CC-5610 (Annex C)
Washington, D.C. 20580

Re: FTC Hearing #8: Competition and Consumer Protection in the 21st Century: Holdings of Non-Controlling Ownership Interests in Competing Companies

Dear Mr. Secretary:

The Bipartisan Policy Center¹ (BPC) appreciates the opportunity to offer comments on the FTC's recent hearing regarding possible anticompetitive effects of acquisitions and holdings of non-controlling ownership interests in competing companies. We believe that the possible policy changes brought up during this process could have important implications for retirement security in America, an issue that must be factored into the debate regarding common ownership.

In 2016, BPC's Commission on Retirement Security and Personal Savings – co-chaired by former Senator Kent Conrad and the Honorable James B. Lockhart III – released bipartisan findings and recommendations for improving U.S. retirement security.² The commission conducted a comprehensive review of the state of retirement in America and the challenges that face the American public in retiring with dignity. Unsurprisingly, one key concern in the report was the ability for individuals and families to save adequately for retirement. According to projections by the Employee Benefit Research Institute, about 43 percent of Baby Boomers and Gen Xers face the risk of outliving their savings.³ In addition, the decline of traditional pensions means that individuals are becoming increasingly dependent on personal savings in retirement, largely accumulated through employer-sponsored defined contribution (DC) accounts (such as 401(k)s).

¹ The Bipartisan Policy Center is a non-profit organization that combines the best ideas from both parties to promote health, security, and opportunity for all Americans. BPC drives principles and politically viable policy solutions through the power of rigorous analysis, painstaking negotiation, and aggressive advocacy. <https://bipartisanpolicy.org/>.

² Bipartisan Policy Center, *Securing Our Financial Future: Report of the Commission on Retirement Security and Personal Savings*. 2016. Available at: <http://bipartisanpolicy.org/retirement-security>.

³ VanDerhei, Jack, *What Causes EBRI Retirement Readiness Ratings™ to Vary: Results from the 2014 Retirement Security Projection Model® EBRI Issue Brief*. February, 2014. Available at: <https://www.ebri.org/content/what-causes-ebri-retirement-readiness-ratings-153-to-vary-results-from-the-2014-retirement-security-projection-model--5351>.

As individuals become more responsible for their own retirement savings, they have increasingly chosen to invest in mutual funds to easily diversify their investments. According to the Investment Company Institute, in 2017 mutual funds accounted for 59 percent of DC plan assets and 47 percent of Individual Retirement Account (IRA) assets.⁴ In addition, the use of passive investment strategies has increased over time, with the share of DC mutual fund assets invested in index funds increasing from 11 percent in 2010 to 21 percent in 2017.⁵

As individuals' retirement outcomes increasingly depend on the performance of mutual funds and passive investment strategies, the regulations governing the management of those funds take on greater importance. FTC's recent roundtable centered on the question of whether growing levels of common ownership could create anticompetitive pressures in industries and discussed certain remedies proposed in parts of the academic literature. Such approaches could have an adverse impact on millions of Americans' retirement outcomes that should be considered before making drastic regulatory changes.

Other organizations with more relevant expertise have provided extensive comments on the overall academic literature regarding common ownership, so we will not provide a lengthy overview here. In short, some academic studies have found that common ownership has correlated with anticompetitive behaviors in certain industries,⁶ while others have contradicted those claims.⁷ As evidenced by the presentations and discussions at FTC's hearing in December, consensus does not exist in the expert community about the effects of common ownership on the competitive behaviors of companies.⁸

This lack of consensus suggests that there is insufficient evidence to take action on the issue of common ownership. The effects on specific industries are hotly contested and the causal mechanism of anticompetitive behavior has yet to be identified. At minimum, before making significant policy changes, additional research should be conducted on the purported link between common ownership and anticompetitive behavior.

The issue at hand takes on additional significance due to the drastic nature of some of the remedies proposed. In particular, moves to limit the ability of funds to invest in more than one

⁴ Investment Company Institute. *2018 Investment Company Fact Book: A Review of Trends and Activities in the Investment Company Industry*. 58th Edition. 2018. Available at: https://www.ici.org/pdf/2018_factbook.pdf. 194.

⁵ *Ibid*, 198.

⁶ See, for example, Jose Azar, Martin C. Schmalz, and Isabel Tecu. "Anticompetitive Effects of Common Ownership." *The Journal of Finance* 73 (2018).

⁷ See, for example, Patrick J. Dennis, Kristopher Gerardi, and Carola Schenone. "Common Ownership Does Not Have Anti-Competitive Effects in the Airline Industry." February 2018. Available at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3063465.

⁸ Federal Trade Commission. *FTC Hearing #8: Competition and Consumer Protection in the 21st Century*. December 6, 2018. Available at: <https://www.ftc.gov/news-events/events-calendar/ftc-hearing-8-competition-consumer-protection-21st-century>.

company per industry or meaningfully restrict the ability of certain institutional investors from participating in the proxy process could fundamentally change the choices available to everyday Americans saving for retirement. The first approach could increase the costs to individual savers of diversifying their portfolios, making the already difficult process of adequately saving for retirement even harder. The second would limit the ability of many fund managers to advocate for the interests of long-term, retirement-oriented investors in corporate governance processes. Given the potential impact on retirement savers, such aggressive and potentially harmful changes should not be made lightly.

We believe that if, upon further study, the claims about the potentially anticompetitive pressures of common ownership are supported by conclusive empirical evidence, the FTC should carefully consider the demonstrated impacts and evaluate possible remedies. Competitive marketplaces are the bedrock of the American economy, and such competition is essential to driving long-term growth for those saving for retirement. Regulatory decisions, however, need to be made with a clear understanding of the possible costs and benefits to the public.

In requesting public comment, the FTC asked what additional research related to the issue of common ownership should be conducted. In addition to the important questions related to the possible effects of common ownership on anticompetitive practices, we would encourage the FTC to explore the potential effects on retirement security before pursuing significant policy changes. The impact of prospective regulations on the ability of the American public to save adequately for retirement is an important consideration in this debate and one that deserves more study before taking actions that would affect investment options for retirement.

Thank you for the opportunity to provide comments to the FTC on its work on common ownership. If we can provide more information on this issue, we would be happy to engage in further discussion.

Sincerely,

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